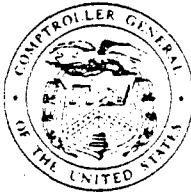


# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

51069 97457

FILE: B-184173

DATE: August 22, 1975

MATTER OF: Herman H. Neumann Construction

## DIGEST:

1. Where bid included alternate item price, bid deviated from amended bidding requirement that alternate work and price therefore be included in base bid price. However, bid may nevertheless be accepted if otherwise proper since deviation did not prejudice other bidders as bidder is obligated to perform all work and bid is low overall whether price under alternate item is included in or is in addition to base bid price.
2. Where bidder stated separate prices for both base bid and alternate item, even though amendment (which was acknowledged) required inclusion of alternate work and price in base bid, bidder may correct base bid price by adding alternate price thereto as bidder has submitted clear and convincing evidence as to both the existence of mistake and price intended and bid is low both as corrected and uncorrected. However, agency is advised that in future bid schedules should be revised to conform with revisions in bidding instructions.

This decision is in response to a protest filed by Herman H. Neumann pursuant to invitation for bids (IFB) No. 12-FC108-75, issued on April 18, 1975, by the United States Coast Guard for construction of a Coast Guard Air Station in Arcata, California.

The solicitation called for bids on a Base Item--the work required for the construction of the air station as shown on the drawings and described in the specifications--and two alternate additive bid items. Alternate No. 1 called for a bid on asphaltic concrete surfaces and parking bumpers, and Alternate No. 2 for a bid on fencing and a gatehouse.

An amendment to the solicitation was issued on May 19, 1975. Paragraph D of the amendment stated:

### D. Bid Itemization

Delete "Alternate #1, Asphaltic concrete surfaces and parking bumpers on all streets and parking lots."  
INCLUDE THIS WORK IN THE BASE BID.

PUBLISHED DECISION  
55 Comp. Gen. ....

At bid opening on May 28, 1975, eight bids were received. The three lowest bids are as follows:

	Basic	Add #1	Add #2
1. Todd Construction Co.	2,538,000		24,000
2. Neumann	2,644,444	59,000	18,000
3. Paul V. Wright, Inc.	2,800,000		20,000

Although seven of the bidders acknowledged receipt of the amendment and, pursuant to provision D (supra), submitted bids on the Base Item and Alternate No. 2 only, Herman Neumann signed and returned the amendment, but included on his bid form prices for the Base Item, Alternate No. 1 and Alternate No. 2.

After withdrawal of the lowest bid due to a mistake in bid, the combined figures submitted by Herman Neumann resulted in the next lowest bid. By telegram of May 28, 1975, the Coast Guard received a protest from Paul V. Wright (the third low bidder) that Neumann's bid was nonresponsive for failing to comply with the amendment to the solicitation. Subsequently, after a review by the contracting officer on June 6, 1975, the Neumann bid was determined to be nonresponsive on the ground that the Government could not determine the total price bid from the submitted offer without further clarification.

On June 10, 1975, Neumann protested the rejection of its bid. Neumann alleges that by adding the Base bid price to Alternate No. 1, his bid is still almost \$100,000 lower than the next lowest bid.

The Coast Guard argues, however, that it was unable to determine Neumann's total price from the bid as submitted since it is unclear whether Neumann complied with the amendment and included the work described in Alternate No. 1 in the Base bid and was just showing the cost he had included, or whether the two prices would have to be added to arrive at his total bid. Therefore, the Coast Guard feels Neumann's bid is ambiguous and that a contrary determination would unfairly permit him "two bites at the apple" since Neumann could claim either of two prices as his bid. The Coast Guard relies on B-161231, June 2, 1967. The thrust of that decision is that a bidder's failure to comply with a material provision of the IFB renders the bid non-responsive and, therefore, the bidder may not be permitted to make his bid responsive by changing, adding to, or deleting a material part of the bid on the basis of an error alleged after opening.

However, the holding in B-161231, supra, has been modified to the extent that it stands for the proposition that a bid is nonresponsive, per se, for deviating from a material provision of the IFB. Keco Industries, Inc., B-183114, May 19, 1975, 54 Comp. Gen. 967. The philosophy of this Office is to focus primarily on whether the deviation in the bid prejudices other bidders. ABL General Systems, Corporation, 54 Comp. Gen. 476 (1974) reflects this position. It states, in part:

"\* \* \* the determinative issue is whether or not this deviation [from the manner of bidding specified in the IFB] worked to the prejudice of other bidders for the award."

In the instant case, it is clear that the deviation from the bidding requirement is not prejudicial to other bidders who adhered to bid instructions. Upon acceptance of his bid Neumann would be contractually bound to perform all the work and, despite Neumann's failure to comply with the IFB amendment with respect to the method of pricing, his total bid is still lower than that of the next lowest bidder, whether it is computed on the basis of the Base bid alone or on the basis of the total of the Base bid and the price stated under Alternate No. 1. In these circumstances, Neumann's bid should not be rejected as nonresponsive.

The remaining question concerns the price at which Neumann is obligated to perform. It is our view that since Neumann acknowledged Amendment No. 1, requiring that the bidders "INCLUDE THIS WORK IN THE BASE BID," he would normally be required upon acceptance of his bid to perform the basis and additive work initially called for under Alternate No. 1 at his Base bid price of \$2,644,444. However, Neumann has alleged, and supported his allegation with affidavits and worksheets, that the statement of a price under Alternate No. 1 was made under the mistaken belief that this was the method of bidding required and that he intended the price of \$59,000 to be in addition to the Base bid. It is our view from the evidence submitted that there is clear and convincing proof as to the existence of a mistake and the bid actually intended. Therefore, and since Neumann's bid is low both as corrected and uncorrected, award may be made at the corrected price of \$2,703,444, if otherwise proper. See Federal Procurement Regulations § 1-2.406-3(a)(1) (1964 ed.).

Finally, it is our opinion that the mistake in Neumann's bid might have been avoided if the Coast Guard had included a revised bid schedule sheet along with Amendment No. 1 to the solicitation in order to have

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made the bid schedule consistent with the revised bidding instructions. We are recommending to the Coast Guard by letter of today that in the future solicitation bid schedules should be revised to conform to revisions in the bidding instructions.

Accordingly, the protest is sustained.

  
Acting Comptroller General  
of the United States